



July 5, 2005

Docket No. 05-015-1
Regulatory Analysis & Development,
PPD, APHIS
Station 3C71
4700 River Road, Unit 118
Riverdale, MD 20737-1238

Sent Via E-mail:

Dear Sir or Madam:

General Comments:

The Livestock Marketing Association (LMA), a national trade association representing over 700 livestock auction markets, dealers and other livestock marketing businesses, appreciates the efforts of U. S. Department of Agriculture's Animal Plant Health Inspection Service (USDA/APHIS) in putting together a very thorough proposal defining the standards and framework necessary to implement a national animal identification system. LMA welcomes the opportunity to comment on the NAIS Draft Strategic Plan (the Plan) and Draft Program Standards (the Standards).

The livestock marketing sector, and livestock auction markets in particular, have a long history of being the pivotal point for livestock identification (ID) programs for animal health and disease surveillance, monitoring and traceback. These market ID programs, which have been critical to protecting the health of the national herd and thus protecting the financial investments of millions of farmers and ranchers, have often come at a heavy price to livestock markets in added costs for facility upgrades, additional workers and worker benefits, and compliance with burdensome regulatory requirements.

The Plan shares all the lofty purposes and benefits of all the earlier federal and state animal ID programs. Unfortunately, it also shares many of the same burdensome program requirements and costs of those earlier animal ID programs to the marketing sector.

The Plan and Standards provide an excellent theoretical guide to how the NAIS will work. Unfortunately, the Plan still lacks practical proven information from the NAIS implementation projects to make us comfortable with how well the NAIS Plan will work in the real world of the livestock industry and in particular the marketing sector. Because so many questions remain about the costs, the utility of current RFID technology and the complexity of implementing the

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NAIS, current LMA policy states that “...until such time as the NAIS pilot/implementation projects are well-established, evaluated and economic impact studies completed, the NAIS should remain voluntary and that LMA member markets, their consignors and buyers take a cautious approach in adopting animal ID technology and information systems that are not fully evaluated and proven through sound empirical studies.”

NAIS Cost

LMA independently and through the USAIP/NAIS Market/Processor Work Group has been and remains highly critical of the fact that too little has been known about the potential cost of establishing a national animal ID system and who will bear those cost. Unfortunately, the Plan does little to allay our fears that the NAIS may largely become an unfunded mandate to the States and the industry as nowhere in it are NAIS stakeholders given a clue as to the federal government’s long-term commitment of federal funds to build the NAIS premise ID and traceability infrastructure. Without some assurances that public funds will be available to substantially subsidize the costs of building and maintaining the NAIS traceability infrastructure at livestock auction markets and other marketing and collection points, our membership remains resistant to a program that currently, without better information, appears to be prohibitively expensive for our industry to implement.

The fears of crippling costs and overly burdensome regulations is why the very long overdue cost-benefit analysis of the NAIS as proposed in the Plan’s “VS Lines of Action” is so critically important. We must have reliable documented cost information if we are to provide the livestock industry and the U. S. Congress with guidance on the cost of the program and the level of private and public funds needed over time to bring the NAIS to completion. Thus we urge USDA/APHIS to immediately begin work on that cost-benefit analysis.

Tagging Site Costs

The Plan and Standards anticipates that many producers, who do not have the facilities or equipment to tag their animals, will seek out their local livestock market to tag their animals as they come to the sale. We agree such a scenario for tens of thousands of producers, particularly in the Southeast is extremely likely, which is what worries us. The concept of tagging sites, which we understand was derived from the Canadian ID experience, on its face may seem like a terrific solution to the problem of untagged animals moving from small unequipped farms or ranches into commerce. However, little was known at the time this idea was devised and still is not known about (1) what the producers’ costs are likely to be in obtaining these tagging services; (2) what the markets’ costs are likely to be in setting up and operating these tagging service sites; and (3) how these tagging services can be provided in a cost-effective manner to avoid overburdening small producers, who are the primary customer base for the majority of livestock marketing businesses?

A stated goal of the NAIS is not to adversely impact small producers and other affected entities to the point of discouraging their continued operation or make them uncompetitive in the marketplace. We can hardly see how this goal can be met if the off-farm tagging costs are not subsidized by the government and/or compensated for in the marketplace.

We are gratified by recent remarks by USDA officials and statements in the Plan that USDA does not intend for the NAIS to become mandatory until legislation is enacted that will “establish a system for withholding or disclosing information obtained through the animal identification system established by the Secretary of the USDA.” Without such strong assurances that proper security measures will be put in place to protect the ID information from abuse and misuse by those outside as well as inside the livestock industry and the ID system, the plan as far as our organization is concerned is a non-starter.

Lastly, we appreciate that USDA/APHIS has provided identification and reporting requirements in the Standards for exported and imported animals. Given the integration of the Canadian and the Mexican livestock industry and the 2003 bovine spongiform encephalopathy incident involving an animal imported from Canada, the United States cannot afford to require any lesser ID standards of our trading partners than required of our own domestic producers.

LMA’s response to specific questions posed by USDA/APHIS follows:

USDA Question: The Draft Strategic Plan calls for making the entire system mandatory by January 2009. Is a mandatory identification program necessary to achieve successful animal disease surveillance, monitoring, and response system to support Federal animal health programs? Please explain why or why not.

LMA Response: In our view, USDA and the individual states already have a highly successful animal disease surveillance, monitoring and response system. We can appreciate that recent world events have encouraged federal and state animal health officials as well as some in the livestock industry to seek out a better, faster means of tracing livestock back to the source of an animal disease problem. However, we should not and cannot move faster than the livestock industry can full absorb the costs and wrenching changes that will accompany a national ID system of the scope and complexity of the NAIS. Thus it is LMA’s view that the NAIS must remain voluntary until the system is sufficiently tested and technology available so as not to adversely affect or jeopardize the economic health of the livestock industry or individual producers.

USDA Question: In the current Draft Strategic Plan, the NAIS would require that producers be responsible for having their animals identified before the animals move to premises where they are to be commingled with other animals, such as a sale barn. At what point and how should compliance be ensured? For example, should market managers, fair managers, etc., be responsible for ensuring compliance with this requirement before animals are unloaded at their facility or event? Please give the reasons for your response.

LMA Response: Livestock auction markets are often put in the role of regulatory compliance officer in the management of federal and state animal health programs, administration of packers and stockyards programs, livestock checkoff programs, animal ID programs, etc. It is not a role the markets relish as it often times puts marketing businesses at odds with the very people upon whom they are dependent for their livelihood. Therefore, LMA urges USDA/APHIS to look within or at other legally mandated authorities, such as federal/state veterinary officials, APHIS ID coordinators, etc., to carry out the duties and responsibilities of an NAIS compliance officer.

USDA Question: In regard to cattle, individual identification would be achieved with an AIN tag that would be attached to the animal's left ear. It is acknowledged that some producers do not have the facilities to tag their animals; thus, the Draft Program Standards document contains an option for tagging sites, which are authorized premises where owners or persons responsible for cattle could have the cattle sent to have AIN tags applied. Do you think this is a viable option, i.e., can markets or other locations successfully provide this service to producers who are unable to tag their cattle at their farms? Please give the reasons for your response.

LMA Response: Tagging at market facilities provides a whole different set of challenges, such as issues of duration of animals in the markets, shrink in the animals that would result in reducing the value of the animal to the seller, worker safety, pen space, availability of feed and water and cost of tagging chutes and equipment. It is well recognized that many small producers, served by marketing businesses, do not have the facilities or equipment to properly tag their cattle. Thus, it is expected that these producers when marketing their livestock will seek out their local livestock market to tag their livestock for them.

If refusing to tag animals at livestock markets did not have the very real potential of driving customers away, forcing market customers into selling off their small herds to avoid the expense and bother of tagging their animals, or tagging could be easily accomplished on-farm, LMA would heartily support a requirement that animals be tagged prior to moving into commerce and those animals that were not properly tagged would be severely discounted or turned back. Such is not the case, however. The majority of our members reluctantly agree that they will likely have to provide tagging services for a fee at their market facilities in order for some of their producer customers to comply with the NAIS once it becomes mandatory. It should be understood however that providing producers with tagging services in no way relieves producers from their legal and financial obligation under the law to ensure that their animals are tagged as they enter commerce.

Lastly, as previously mentioned in our general comments, the cost of and specific problems associated with setting up and maintaining tagging sites at livestock markets is unknown. Thus it becomes particularly important that we have information from the USDA/APHIS cost benefit analysis and from NAIS implementation projects testing the tagging site concept as soon as possible and certainly well before January 2008 when the individual and group/lot animal identification becomes mandatory. Without this timely information there will be no way that the government and the marketing sector can make reasonable judgments relative to the feasibility and cost of these tagging sites.

USDA Question: The current Draft Strategic Plan does not specify how compliance with identification and movement reporting requirements will be achieved when the sale is direct between a buyer and seller (or through their agents). In what manner should compliance with these requirements be achieved? Who should be responsible for meeting these requirements? How can these types of transactions be inputted into the NAIS to obtain the necessary information in the least costly, most efficient manner?

LMA Response: We agree that the USDA and the States will likely face major compliance challenges respective to private treaty/country trades. We can foresee a scenario where producers will attempt to circumvent the system through private treaty trades rather than go through markets and dealers where there are identification and data reporting controls in place. In fact, we are aware of one instance where the operator of a cattle backgrounding operation has suggested to a LMA member market that he is planning to buy calves off of neighboring farms and not require them to be tagged or identified to the premise of origin as a financial incentive for his neighboring producers to sell to him. While there are all manner of liability questions and associated costs to the backgrounder in doing this, it shows the difficulties that are sure to exist in regulating these private treaty sales.

The current requirement in the Standards for receiving premises to report animal movements may help alleviate some of the compliance problems with direct or private treaty sales as the receiving premises becomes liable if anything occurs to those animals and they cannot be properly traced to the previous receiving premises or the premises of origin.

Also, for this and other reasons, the USAIP/NAIS Market/Processor and Cattle Specie Working Groups had strongly recommended that all cattle must be individually identified. Although it has been suggested some cattle may meet the Standards in the NAIS to be moved as a group/lot, the Cattle Species and Market / Processor Working Group believes the potential for abuse in exercising this option would be significant and would cause major inequities in the marketing arena. Also, the potential for cattle to be commingled is significantly higher than in other species and it is strongly felt that by having all cattle individually identified, any potential marketing inequities could be averted.

As a member of the Performance Standards Working Group, LMA's Vice President for Government & Industry Affairs Nancy Robinson had been led to believe that the Standards for cattle would carry such a requirement however it was apparently inadvertently left out of the USDA/APHIS Standards document. Therefore, we strongly recommend that the requirement for individual identification of cattle universally agreed to by the Market/Process and Cattle Specie Working Groups be reinserted in the Standards.

USDA Question: The NAIS as planned would require States, producers, and other participating entities to provide information and develop and maintain records. How could we best minimize the burden associated with these requirements? For example, should both the seller and the buyer of a specific group of animals report the movement of the animals, or is reporting by one party adequate?

LMA Response:

We agree with the statement in the Plan that, "Collecting and recording animal movements is the greatest challenge ahead." We also appreciate that USDA, in response to these challenges, intends to continue "to support field trials and gradual implementation of successful data collection systems..."

No one who knows how livestock are marketed through livestock auction market facilities and knows who typically buys in these facilities would ever suggest that marketing operations could

know or identify what premise an animal is likely to end up on once it leaves a market facility. Our records are able to identify the premise number of a farmer or rancher buying the livestock or the non-producer participant number of a dealer or order-buyer but, beyond that, a market would be unable to associate an individual animal with a premise that is being sent in a pot load of cattle that are going to five different locations or premises.

Thus, we agree with the statement on page 18 of the Standards: *Animal Movements* that: "The reporting of animal movement would be the sole responsibility of the receiving premises or person responsible for the animals at the receiving premises. The receiving premises are the premises to which animals are moved and at which a responsible party (not necessarily the buyer) would be responsible for reporting that identified animal have arrived."

Such a standard would significantly reduce markets and sellers' liability, as it is impossible for a market operator or other sellers of livestock to know whether he/she is accurately reporting the premises receiving the livestock, whereas the "receiving premises" is able to do so with a high degree of accuracy. Also, some buyers might consider it a breach of confidentiality if the seller or the seller's agent were "required" to report animal movements to the receiving premises as the "receiving buyer's" premises number would have to be shared with the seller or the seller's agent.

USDA Question: USDA suggests that animals should be identified anytime prior to entering commerce or being commingled with animals from other premises. Is this recommendation adequate to achieve timely traceback capabilities to support animal health programs or should a timeframe (age limit) for identifying the animals be considered? Please give the reasons for your response.

LMA Response: If, as it appears right now, that the age of animals is going to be an important export requirement then cattle should be identified early on in their life, perhaps even at birth or weaning. Also, calves are typically being handled at some point shortly after birth therefore requiring tagging at early stages of an animal's life would resolve the issue of tagging off-farm at a livestock market or other tagging service operation. Making such a recommendation would however lead understandably to enormous on-farm compliance problems that would be impossible to police and therefore may not be practical. For this reason, this question may ultimately have to be resolved through the marketplace than through regulatory fiat.

USDA Question: Are the timelines for implementing the NAIS, as discussed in the Draft Strategic Plan, realistic, too aggressive (i.e., allow too little time), or not aggressive enough (i.e., do not ensure that the NAIS will be implemented in a timely manner)? Please give the reasons for your response.

LMA Response: Without information as to how the dates or timeline for implementation of the NAIS were determined, it is difficult to address the timeliness of the implementation schedule. Nevertheless, it is LMA's view that the NAIS implementation schedule should not be dependent on a seemingly arbitrary timeline but rather on: (1) funding and implementation of the NAIS infrastructure; (2) a clear determination that uniform ID technology exists that is workable and cost-effective for the various users; and (3) the results of NAIS implementation projects,

particularly those investigating the viability of the ID technology and traceability issues, are available and factored into the NAIS implementation timeline.

USDA Question: Should requirements for all species be implemented within the same timelines, or should some flexibility be allowed? Please give the reasons for your response.

LMA Response: No, the NAIS implementation timeline should remain flexible for all species, including cattle. Without knowing what factors went into the Strategic Plan timeline, we believe these timelines need to be recommended timelines and made concrete only at such time as the infrastructure and technology is determined to be fully adequate and operational for all species and sectors of the livestock industry.

USDA Question: What are the most cost-effective and efficient ways for submitting information to the database (entered via the Internet, file transfer from a herd-management computer system, mail, phone, third-party submission of data)? Does the type of entity (e.g., producer, market, slaughterhouse), the size of the entity, or other factors make some methods for information submission more or less practical, costly, or efficient? Please provide supporting information if possible.

LMA Response: As markets are likely to have to link electronic ID scanning devices to a computer, we have to assume file transfer via the Internet would be the most efficient and cost-effective for the markets to report the ID information. If however the size of the files to be downloaded to the central database requires DSL or broadband Internet service this could present a real problem to market facilities in more remote rural areas not served by high-speed Internet connections. Also, DSL/Broadband Internet service is somewhat expensive thus adding another cost for marketing businesses to absorb or pass on in complying with the NAIS.

USDA Question: We are aware that many producers are concerned about the confidentiality of the information collected in the NAIS. Given the information identified in the draft documents, what specific information do you believe should be protected from disclosure and why?

LMA Response: Any information that would publicly identify specific premises or be considered to be of a proprietary nature should be protected from disclosure. Also individual animal data elements that would identify specific animals back to premises where the animals had been held must be protected. Information necessary to market a specific animal or class of animals, such as age or breed, could be disclosed as long as it does not require disclosure of the associated premises.

USDA Question: A key issue in the development of the NAIS concerns the management of animal tracking information. Animal health officials must have immediate, reliable, and uninterrupted access to essential NAIS information for routine surveillance activities and in the event of a disease outbreak. APHIS determined that this goal could best be achieved by having the data repositories managed by APHIS. The Draft Program Standards document provides for two main NAIS information repositories: The National Premises Information Repository and the National Animal Records Repository. The National

Premises Information Repository would maintain data on each production and animal holding location (contact name, address, phone number, type of operation, etc.). The National Animal Records Repository would maintain animal identification and movement data.

LMA Response: LMA agrees with the Draft Program Standards that the two main NAIS information repositories should be maintained by APHIS.

USDA Question: Recently, however, an industry-led initiative suggested a privately managed database as an alternative for the management of data on animal tracking in the NAIS. The industry group stated that a private database would ensure that the needs of both government and industry would be fulfilled, and that the flow of information throughout the NAIS would be maintained in a secure and confidential manner.

LMA Response: LMA does not support the NAIS animal ID records being held in a privately managed database unless that private central database is established by a non-profit consortium of livestock industry companies and organizations that is deemed to be cost-effective and capable of maintaining the confidentiality of NAIS records.

The electronic recordkeeping and reporting process must be kept as simple as possible. Introduction of multiple privately managed databases could reasonably be expected to complicate the reporting process and make the system potentially more costly for producers and livestock marketing businesses.

APHIS is requesting comment from stakeholders regarding the utility of a privately managed database for holding animal location and movement information. Among the issues you may wish to comment on are the following:

- 1. How should a private database system be funded? Please give the reasons for your response.**
- 2. Should the NAIS allow for multiple privately managed databases? Please explain why or why not.**
- 3. Should a public (government) system be made available as well as a privately managed system so that producers would have a choice? Please give the reasons for your response.**
- 4. Should a privately managed system include all species? Please give the reasons for your response.**
- 5. Would either system work equally well at the State level? Please explain why or why not.**

LMA Response: See the response to the previous question.

That completes LMA's comments to the NAIS Plan and Standards. Over 37.7 million cattle and calves, 6.5 million hogs and pigs and 4.1 million sheep and lambs were traded through more than

1400 livestock markets in 2002. Approximately 4400 dealers and order buyers handled another 31.8 million cattle and calves, 19.4 million hogs and pigs and 2.9 million sheep and lambs. Given the sheer numbers of livestock marketed through livestock marketing businesses alone, the weight of implementing and managing the NAIS reporting requirements through those marketing businesses obviously will be immense. For this reason, the Plan and Standards must remain flexible and open to change upon new information from the implementation projects and the USDA/APHIS's proposed cost benefit analysis.

Thank you for your consideration of our comments to the NAIS Draft Plan and Standards.

Sincerely,

Livestock Marketing Association

Nancy J. Robinson
Vice President, Government
And Industry Affairs